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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,004	03/19/2007	Mario Cladinoro Piraino	96991	4578
24628 7590 11/12/2008 Husch Blackwell Sanders, LLP Welsh & Katz 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606				
EXAMINER TRETTEL, MICHAEL				
ART UNIT 3673		PAPER NUMBER		
MAIL DATE 11/12/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/573,004

Applicant(s)

PIRAINO, MARIO CLADINORO

Examiner

Michael Trettel

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-34 and 37-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 13, and 25-27 there is no antecedent basis for "the plane of extension".

In claims 6 and 18 there is no antecedent basis for "the plane of the bed".

In claims 7-10 and 19-22 there is no antecedent basis for the term "the folding bed".

In claims 9, 10, 21, and 22 there is no antecedent basis for the terms "the hinged folding of the bed".

In claims 30 and 37 there is no antecedent basis for "said height adjustment means".

Claim 7 depends from itself.

Claim 9 sets forth an open ended assortment of components by the phrase "one or more of levers, rods, plates, gussets, and sliding mechanisms" making it unclear if all of these elements are being claimed or not.

Regarding claims 27 and 28, the word "means" is preceded by the word(s) "fixed" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is

impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Regarding claim 42, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claims 41 and 42 are further indefinite since they use alternate terms in an open ended fashion such that it is impossible to determine the metes and bounds of the claimed subject matter. For example, claim 41 sets forth "separate components of springs and padding and one or more mattress covers" which makes it unclear if one, all, or a subset of these elements are being claimed. Claim 42 sets forth "a further (sic) mattress cover or by a continuous base" which are not equivalent elements. It is unclear if one, both, or neither of these elements are being claimed. As written, it is impossible for the examiner to reasonably determine what the applicant is attempting to set forth in these claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting

ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 35-40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 7,159,255. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims set forth a subset of the subject matter claimed in the '255 patent and are therefore fully encompassed by those claims. In the present case claims 35-40 drop out the reference to a plurality of transverse slats being engaged by the cams, otherwise the claims are substantially identical. Since the claimed subject matter is otherwise present in the '255 claims the present claims are fully encompassed by the '255 claims, regardless of the additional subject matter present in the '255 claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 6, 13, 15, 16, 18, and 25-28, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobsen (US 4,307,477). Jacobsen shows an adjustable mattress frame 10 that supports a pivoted head section frame 14 and foot section frame 15 which can support a mattress formed by pads 20, 21. The head section frame 14 can be pivoted

upwardly into an inclined position and held in place by a prop 16. A secondary pivoted frame 25 is supported within the head section frame 14 at a head end pivot 24 and can be pivoted upwardly by a pivot link 30 and lever 28. This displaces the mattress section 20 out of the plane of the remainder of the mattress.

Claims 1-28, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Nielson (US 3,484,878). Nielson shows an adjustable back rest assembly for a bed or chair that broadly comprises a back rest frame 3 pivoted to a base frame 1 at a pivot adjacent a seat frame 2. A prop 4 can be used to adjust the angle of the back rest, although a hydraulic or electric actuator can be used (column 3, lines 44 and 45). A transverse shaft with eccentrics 8 is mounted to the back frame 3, with the eccentrics 8 being used to adjust the curvature of longitudinal lamellae 5 attached to the back rest. The ends of the shaft are mounted in slides 10 are attached to the sides of the back rest 3. An arm 6 is attached to each slide at one end at a second distal end to a bracket 9 by a pivot 7. As the angle of the back rest 3 is adjusted the slides 10 are slid along the back rest by means of the arms 6, this automatically adjusts the curvature of the lamellae 5 which in turn adjusts the lumbar curvature of the back rest.

Claims 35-40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Piraino (US 2004/0098805 A1). The published Piraino application has an effective publication date of May 27, 2004 which predates by more than one year the effective U.S. filing date of March 21, 2006 of the present application. Since the invention as claimed is fully disclosed in the Piraino application it has been anticipated by this publication, regardless of the common inventorship.

Claims 41 and 42, as best understood, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Janapol (US 3,126,554).

Allowable Subject Matter

Claims 29-34 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. L'Hegarat et al (US 6,874,182), Marengo (US 5,708,996), and Nielson (US 3,289,222) show body supports which are of general interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is (571) 272-7052. The examiner can normally be reached on Monday, Tuesday, Thursday, and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael Trettel
Primary Examiner
Art Unit 3673

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